STATE OF NEW YORK

6371--B

2017-2018 Regular Sessions

IN SENATE

May 11, 2017

Introduced by Sens. AVELLA, HAMILTON, HOYLMAN, SAVINO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Civil Service and Pensions in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the retirement and social security law, in relation to disability retirement benefits for certain participants in World Trade Center rescue, recovery, or cleanup operations

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph 4 of subdivision d of section 605 of the retirement and social security law is renumbered paragraph 5 and a new paragraph 4 is added to read as follows:

4. Notwithstanding any other law, rule or regulation to the contrary, any member who had an active membership when such member participated in World Trade Center rescue, recovery, or cleanup operations, as such participation is defined in section two of this chapter, who incurred a qualifying World Trade Center condition, as defined in section two of this chapter, that is determined to have been incurred in the performance and discharge of duty and is the natural and proximate result of an accident not caused by such member's own willful negligence, shall be paid a performance of duty disability retirement allowance equal to three-quarters of final average salary. The payment of such pension shall be subject to the provisions of section sixty-four of this chapter.

§ 2. Section 507 of the retirement and social security law is amended by adding a new subdivision h-1 to read as follows:

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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h-1. Notwithstanding any other law, rule or regulation to the contrary, any member who had an active membership when such member participated in World Trade Center rescue, recovery, or cleanup operations, as such participation is defined in section two of this chapter, who incurred a qualifying World Trade Center condition, as defined in section two of this chapter, that is determined to have been incurred in the performance and discharge of duty and is the natural and proximate result of an accident not caused by such member's own willful negligence, shall be paid a performance of duty disability retirement allowance equal to three-quarters of final average salary. The payment of such pension shall be subject to the provisions of section sixty-four of this chapter.

§ 3. This act shall take effect immediately and apply to all active members who are determined to have incurred a qualifying World Trade Center condition in the performance and discharge of duty that is the natural and proximate result of an accident not caused by such member's own willful negligence prior to the effective date of this act.

FISCAL NOTE.--Pursuant to Legislative Law, Section 50:

This bill would amend the benefits of certain members of public retirement systems who are subject to the provisions of Article 14 or Article 15 of the Retirement and Social Security Law who contract any form of disease or disability related to exposure to any elements in connection with the World Trade Center rescue, recovery or cleanup operations. The annual accidental disability benefit would be 75% of a member's final average salary less workers compensation, regardless of a member's plan coverage. Currently, eligible members receive the accidental disability benefit specified in the plan under which they are covered, which for most Article 14 and 15 member is 1/3 of a member's final average salary. This improved benefit would be payable only to current members or their beneficiaries, who must file for this benefit prior to September 11, 2019. Current retirees and their beneficiaries would not be affected by this bill.

If this bill is enacted, the cost of the revised benefit will depend upon the applicant's age, service, salary, plan, and benefit type otherwise payable, but is expected to cost up to 4 times final average salary per individual.

Insofar as this bill would affect the New York State and Local Employees' Retirement System, there are currently 657 active members, with a salary of $6.7 million, who have filed an Application for World Trade Center Notice who could potentially receive benefits under this bill.

A precise cost for future years can't be determined at this time. Pursuant to Section 25 of the Retirement and Social Security Law, the increased cost would be borne entirely by the State of New York and would require an itemized appropriation sufficient to pay the cost of the provision. Every year a cost will be determined (and billed to the state) based on those benefitting from this provision.

Summary of relevant resources:

The membership data used in measuring the impact of the proposed change was the same as that used in the March 31, 2017 actuarial valuation. Distributions and other statistics can be found in the 2017 Report of the Actuary and the 2017 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2015, 2016, and 2017 Annual Report to the Comptroller on Actuarial Assumptions, and the Codes Rules and Regulations of the State of New York: Audit and Control.

The Market Assets and GASB Disclosures are found in the March 31, 2017 New York State and Local Retirement System Financial Statements and Supplementary Information.

I am a member of the American Academy of Actuaries and meet the Qualification Standards to render the actuarial opinion contained herein.

This estimate, dated June 5, 2018, and intended for use only during the 2018 Legislative Session, is Fiscal Note No. 2018-97, prepared by the Actuary for the New York State and Local Retirement System.

FISCAL NOTE.-- Pursuant to Legislative Law, Section 50:

SUMMARY OF BILL: With respect to the New York City Pension Funds Retirement Systems (NYCRS), the proposed legislation would amend provisions of the Retirement and Social Security Law (RSSL) to grant to active NYCRS members, who are subject to RSSL Articles 14 or 15 and incur a World Trade Center (WTC) Qualifying Condition, a performance of duty disability retirement equivalent to 75% of the member's Final Average Salary (FAS). The proposed legislation would also require that applicable members or beneficiaries of the proposed benefit file a WTC Notice of Participation with the applicable NYCRS by September 11, 2018 to be eligible to receive the proposed benefit.

Effective Date: Upon enactment, and retroactive for qualifying members who retired with a non-75% FAS WTC disability retirement.

IMPACT ON BENEFITS PAYABLE: Under the proposed legislation, the benefits for WTC retirees would be revised to equal a retirement allowance of:

* 75% multiplied by FAS,

Reduced by:

* 100% of Workers' Compensation benefits (if any) payable (as required by RSSL Section 64).

Please note that, generally, uniformed WTC retirees are currently entitled to a 75% of FAS benefit (i.e. members of the New York City Police Pension Fund (POLICE), the New York City Fire Pension Fund (FIRE), and Sanitation, Correction, EMT, and Deputy Sherriff members of the New York City Employees' Retirement System (NYCERS)). Therefore, the application of the proposed legislation would likely be limited to active Tier 3 and 4 civilian members of NYCERS, the Teachers' Retirement System of the City of New York (NYCTRS), and the New York City Board of Education Retirement System (BERS).

Although certain NYCRS members are ineligible for Workers' Compensation benefits and therefore would not have their benefit subject to an offset, for purposes of this Fiscal Note, it is assumed that the Workers' Compensation offset provisions cited in Sections 1 and 2 of the proposed legislation would not apply to NYCRS members because such members are not paid retirement benefits under RSSL Article 2, which is a requirement for the application of the offset provision contained in RSSL Section 64.

FINANCIAL IMPACT - ACTUARIAL PRESENT VALUE OF BENEFITS (APVB): Although there are currently approximately 4,700 submitted qualified WTC Notice of Participation Forms for applicable NYCERS, TRS, and BERS members, the number of members from this group, and any additional eligible members who timely file such Form by the extended September 11, 2018 date contained in this proposed legislation, who could potentially benefit from this proposed legislation in the future cannot be readily determined. Therefore, the ultimate impact of this proposed legislation would depend on the number of members affected in the future as well as other characteristics including the age, years of service, and salary history of the member.

However, for purposes of this fiscal note, only those members who have retired from active membership with a qualifying WTC-related condition and receive a non-75% FAS WTC disability benefit have been considered. Those members who have been reclassified as having a WTC-related disability after retirement from service, based on the proposed legislation's limited application to active members, and the unknown number of active members who may eventually retire in the future with a current non-75% FAS WTC disability benefit, were not included in the below calculation.

With respect to applicable NYCRS retirees currently in receipt of non-75% FAS WTC disability benefits, under the actuarial assumptions used in the Preliminary June 30, 2017 (Lag) actuarial valuations of NYCRS, the enactment of this proposed legislation would increase the APVB by approximately $23,003,000 as of June 30, 2017. This amount is the sum of the amounts shown in the table below.

ESTIMATED FINANCIAL IMPACT ON NYCERS, TRS, AND BERS
IF CERTAIN CIVILIAN NYCRS WTC MEMBERS
RECEIVE A 75% PERFORMANCE OF DUTY DISABILITY BENEFIT

($ 000s)

APVB	NYCERS	TRS	BERS	Total
Retroactive*	$ 8,438	$18	$0	$ 8,456
Prospective	14,503	44	0	14,547
Total	$22,941	$62	$0	$23,003

* It has been assumed that no interest will be credited on these retroactive payments.

FINANCIAL IMPACT - EMPLOYER CONTRIBUTIONS: In accordance with Administrative Code of the City of New York (ACCNY) Section 13-638.2(k-2), new Unfunded Accrued Liability (UAL) attributable to benefit changes are to be amortized as determined by the Actuary but generally over the remaining working lifetime of those impacted by the benefit changes. For this proposed legislation, since those that would benefit are retired, the entire increase in UAL of $23,003,000 would be recognized in the first year that the increased pension was paid.

OTHER COSTS: Not measured in this Fiscal Note are the following:

* Any additional costs related to future civilian NYCRS members who retire due to a WTC qualifying condition and who would benefit from this proposed legislation, if enacted.

* The initial, additional administrative costs of the NYCRS to implement the proposed legislation.

* The impact of this proposed legislation on Other Postemployment Benefit (OPEB) costs.

CONTRIBUTION TIMING: For the purposes of this Fiscal Note, it is assumed that the changes in the employer contributions would be reflected for the first time in the June 30, 2018 actuarial valuation of NYCERS, TRS, and BERS. In accordance with the One-Year Lag Methodology (OYLM) used to determine employer contributions, the increase in employer contributions would first be reflected in Fiscal Year 2020.

CENSUS DATA: The starting census data used for the calculations presented herein is the census data used in the Preliminary June 30,

2017 (Lag) actuarial valuation of the NYCRS to determine the Preliminary Fiscal Year 2019 employer contributions.

This data was supplemented by data provided by NYCERS, TRS, and BERS that identified retirees currently in receipt of non-75% FAS WTC disability benefits. NYCERS identified 51 members with an average benefit of $29,007, TRS identified one member with a benefit of $36,512, and BERS did not identify any members currently receiving non-75% FAS WTC disability benefits.

ACTUARIAL ASSUMPTIONS AND METHODS: The additional employer contributions presented herein have been calculated based on the actuarial assumptions and methods in effect for the Preliminary June 30, 2017 (Lag) actuarial valuations used to determine the Preliminary Fiscal Year 2019 employer contributions of NYCRS. Please note these assumptions and methods are subject to change as this valuation is not considered final until the end of Fiscal Year 2019.

STATEMENT OF ACTUARIAL OPINION: I, Sherry S. Chan, am the Chief Actuary for, and independent of, the New York City Retirement Systems and Pension Funds. I am a Fellow of the Society of Actuaries, an Enrolled Actuary under the Employee Retirement Income and Security Act of 1974 (ERISA), a Member of the American Academy of Actuaries, and a Fellow of the Conference of Consulting Actuaries. I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein. To the best of my knowledge, the results contained herein have been prepared in accordance with generally accepted actuarial principles and procedures and with the Actuarial Standards of Practice issued by the Actuarial Standards Board.

FISCAL NOTE IDENTIFICATION: The Fiscal Note 2018-37 dated June 13, 2018, was prepared by the Chief Actuary for the New York City Employees' Retirement System, the New York City Teachers' Retirement System, and the New York City Board of Education Retirement System. This estimate is intended for use only during the 2018 Legislative Session.

FISCAL NOTE.-- Pursuant to Legislative Law, Section 50:

This bill would amend Sections 2, 507, and 605 of the Retirement and Social Security Law to allow any member of the New York State Teachers' Retirement System who had an active membership when such member participated in the World Trade Center rescue, recovery, or cleanup operations and who incurred a qualifying World Trade Center condition determined to have been incurred in the performance and discharge of duty to receive a performance of duty disability retirement benefit equal to 75% of final average salary. Currently an active member would receive an accidental disability retirement benefit which is generally one-third of final average salary. Members who become disabled or die as a result of a qualifying World Trade Center condition are assumed to have become disabled or died as a result of an accidental or on-the-job disability or death. The deadline to apply for this performance of duty disability retirement benefit for a member or an eligible beneficiary in the case of a member's death would be September 11, 2019. This bill would take effect immediately and apply to all members who are determined to have incurred a qualifying World Trade Center condition in the performance and discharge of duty prior to the effective date of this act.

The cost, or additional present value of benefits, is estimated to be, on average, $300,000 for each member who receives this performance of duty disability retirement benefit. Although the potential increase in an affected member's benefit is estimated to be large, the additional annual cost to the employers of members of the New York State Teachers' Retirement System is estimated to be negligible if this bill is enacted

because it is anticipated there would be few applications received for this performance of duty disability retirement benefit from our membership.

Member data is from the System's most recent actuarial valuation files, consisting of data provided by the employers to the Retirement System. Data distributions and statistics can be found in the System's Comprehensive Annual Financial Report (CAFR). System assets are as reported in the System's financial statements, and can also be found in the CAFR. Actuarial assumptions and methods are provided in the System's Actuarial Valuation Report.

The source of this estimate is Fiscal Note 2018-31 dated June 14, 2018 prepared by the Actuary of the New York State Teachers' Retirement System and is intended for use only during the 2018 Legislative Session. I, Richard A. Young, am the Actuary for the New York State Teachers' Retirement System. I am a member of the American Academy of Actuaries and I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.